

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED ADJUSTMENT OF THE)
WHOLESALE WATER SERVICE RATES) CASE NO. 2015-00039
OF THE CITY OF AUGUSTA)

ORDER

On February 9, 2016, the city of Augusta ("Augusta") and the Bracken County Water District ("Bracken District"), the only parties to this proceeding, filed a Joint Motion for Approval of Settlement Agreement and Stipulation and Water Purchase Contract ("Joint Motion"). The parties requested approval of the Settlement Agreement and Stipulation ("Settlement Agreement") and also of the proposed Water Purchase Contract ("Contract") that "supersedes and replaces the provisions of all previous agreements between the Parties."¹

The Contract filed on February 9, 2016, included, among other things, a requirement for Augusta to provide certain reports and records to Bracken District.² The Contract also contained a penalty provision that specified the consequences if Augusta failed to timely provide the required reports and documents. In pertinent part, the provision stated that "Bracken District may withhold ten percent of the total invoiced cost

¹ Joint Motion (filed Feb. 9, 2016), Settlement Agreement, Exhibit A, Contract at 1. The Settlement Agreement is Exhibit A of the Joint Motion. The Settlement Agreement has a secondary Exhibit A, which consists of the Contract.

² *Id.*, Contract at 8.

of water for the monthly period in which Augusta's failure occurred."³ The penalty provision permitted Bracken District to permanently withhold the amount if Augusta failed to provide the required reports and records within a 30-day window.⁴ On April 15, 2016, the Commission entered an Order that found the Settlement Agreement and Contract reasonable and in the public interest only if the permanent withholding portion of the penalty provision were to be stricken from the Contract.⁵

On April 21, 2016, Augusta and Bracken District filed a Notice of Filing and Motion for an Order Declaring Amended Water Purchase Contract Effective as of Date of Filing or, in the Alternative, Approving Amended Water Purchase Contract ("Notice and Motion"). The Notice and Motion includes, as an attachment, the parties' First Amendment to Water Purchase Contract ("First Amendment") that eliminates the permanent withholding provision from the Contract.⁶ The First Amendment to the contract is attached to this Order as the Appendix. Augusta and Bracken District request an Order declaring that the "Contract, as amended, meets the condition set forth in the Order of April 15, 2016, and became effective upon its filing to the Commission."⁷

Having reviewed the First Amendment, the Commission finds that the Contract, as amended, no longer contains a provision that permits a permanent withholding by Bracken District; therefore, the Contract, as amended, meets the condition set forth in

³ *Id.*

⁴ *Id.*

⁵ Order (Ky. PSC Apr. 15, 2016) at 2 and 8.

⁶ Notice and Motion (filed Apr. 21, 2016) at First Amendment to Water Purchase Contract.

⁷ *Id.* at 2.

our April 15, 2016 Order. The Commission further finds the Contract, as amended, reasonable and in the public interest. The Commission finds that the Contract, as amended, was effective upon the date of the filing of the First Amendment, April 21, 2016.

The Commission also notes that on January 13, 2016, Augusta filed a Motion to Substitute Redacted Pages ("Motion to Substitute"). In its Motion to Substitute, Augusta states that pages 2–13 of Exhibit 6 of its March 30, 2015 Response to the Commission's February 10, 2015 Request for Information contained personal information that should have been redacted from the filing pursuant to 807 KAR 5:001, Section 4(10).⁸ With its Motion to Substitute, Augusta tendered new pages for the Response that comply with 807 KAR 5:001, Section 4(10). The Commission finds that the pages submitted with Augusta's Motion to Substitute comply with 807 KAR 5:001, Section 4(10), and good cause exists to grant Augusta's Motion to Substitute.

IT IS THEREFORE ORDERED that:

1. The Augusta and Bracken District request for a declaratory order is granted.
2. The Augusta and Bracken District Water Purchase Contract, as amended by the First Amendment, satisfies the condition set forth in the Commission's April 15, 2016 Order.
3. The Augusta and Bracken District Water Purchase Contract, as amended by the First Amendment, is approved for service rendered on or after its April 21, 2016 filing date with the Commission.

⁸ Augusta Motion to Substitute (filed Jan. 13, 2016) at 1.

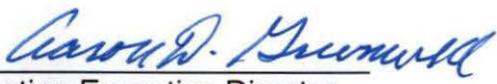
4. Augusta's Motion to Substitute is granted. The pages tendered with the Motion to Substitute are accepted into the record.

5. This case is closed and is removed from the Commission's docket.

By the Commission



ATTEST:


Acting Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSIONIN CASE NO. 2015-00039 DATED **MAY 19 2016**

**FIRST AMENDMENT TO
WATER PURCHASE CONTRACT**

This **First Amendment to Water Purchase Contract** is made and entered into this 20th day of April, 2016 by and between the City of Augusta, Kentucky (“Augusta”) and Bracken County Water District (“Bracken District) (collectively “the Parties”).

WITNESSETH:

WHEREAS, the Parties executed the Water Purchase Contract on February 6, 2016 to replace their previous agreements regarding Augusta’s provision of water service to Bracken District;

WHEREAS, the Parties submitted the Water Purchase Contract to the Kentucky Public Service Commission on February 9, 2016 for its review and approval; and,

WHEREAS, on April 15, 2016, the Kentucky Public Service Commission entered an Order in which it approved the Water Purchase Contract on the condition that the Parties amend Paragraph 21 of the Water Purchase Contract to eliminate Bracken District’s right to permanently withhold monies for any failure on Augusta’s part to timely submit reports or documents required by Paragraph 20 of the Water Purchase Contract;

NOW THEREFORE, the Parties agree as follows:

1. Paragraph 21 of the Water Purchase Contract, which the Parties executed on February 6, 2016, is amended to read as follows:

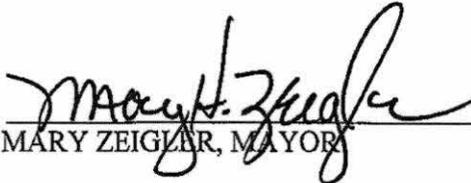
21. **Failure to Timely Provide Required Reports.** If Augusta fails to make timely submission of any of the reports or documents as required by Paragraph 20 of this Agreement, Bracken District may withhold ten percent of the total invoiced cost of water for the monthly period in which Augusta’s failure occurred. Bracken District shall notify Augusta in writing of its action and the reason for such action. Bracken District may retain the withheld amount until Augusta has submitted the required report or document. Upon receipt of the required report or document, Bracken District shall pay the withheld amount to Augusta within 10 days. Augusta shall be excused from compliance of the requirements of Paragraph 20 if it suffers temporary or permanent loss of information through damage to or failure of its informational technology (“IT”) systems. Augusta shall inform Bracken District about the loss of data within the proscribed time period identified in Paragraph 20 and produce to Bracken District all responsive information available to it. If information is restored at a later time, Augusta shall provide responsive information not previously produced to Bracken District. Upon notification of the loss of data due to damage to or failure of Augusta’s IT systems, Bracken District may not withhold any amount of the invoiced cost of water pursuant to the terms of this Paragraph.

2. All other provisions of the Water Purchase Contract not specifically addressed in this First Amendment are ratified and affirmed.

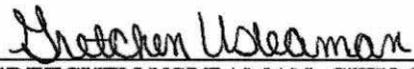
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SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the Parties acting under the authority of their respective governing bodies, have caused this First Amendment to Water Purchase Contract to be duly executed in multiple counterparts, each of which shall constitute an original.

CITY OF AUGUSTA, KENTUCKY

By: 
MARY ZEIGLER, MAYOR

ATTEST:


GRETCHEN USLEAMAN, CITY CLERK

BRACKEN COUNTY WATER DISTRICT

By: _____
ANTHONY HABERMEHL, CHAIRMAN

ATTEST:

TIMOTHY SWEENEY, SECRETARY

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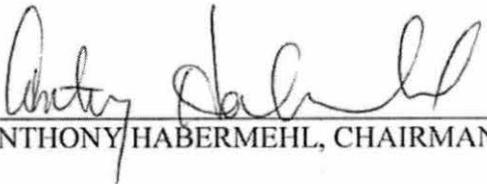
CITY OF AUGUSTA, KENTUCKY

By: _____
MARY ZEIGLER, MAYOR

ATTEST:

GRETCHEN USLEAMAN, CITY CLERK

BRACKEN COUNTY WATER DISTRICT

By: 
ANTHONY HABERMEHL, CHAIRMAN

ATTEST:



TIMOTHY SWEENEY, SECRETARY

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